TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 270

CECIL W. ARMSTRONG, ET AL., PETITIONERS,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 3, 1959
CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 270

CECIL W. ARMSTRONG, ET AL., PETITIONERS,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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[fol. 1]

IN THE UNITED STATES COURT OF CLAIMS

No. 53256

(1) Cecil W. Armstrong and Marie I. Armstrong, co-partners doing business as Armstrong Products Company

(2) Baltimore Copper Paint Co., a division of Oliver Reeder and Son, Inc.

(3) Orrin E. Benner, doing business as Thomaston Steel Works

(4) Mason C. Carter

(5) Chase Brass & Copper Co.

(6) Columbian Bronze Corp.

(7) Maurice W. Dennison, Thomas G. Lynah and Charles J. Winkler, Jr., Trustees doing business as Braman, Dow & Co.

(8) The Dexolium Corporation

(9) Heywood-Wakefield Company

(10) E. F. Hutchinson, doing business as Ned's Garage

(11) Kainer & Company

(12) O. O. Keiver Lumber Corp.

(13) Kennebec Wharf & Coal Company, a division of Staples Coal Company

(14) Hiema J. Kuhls, Anna Kuhls Yates, Gladys Kuhls Woodel and Frieda Kuhls Woodel, co-partners doing business as H. B. Fred Kuhls

(15) Le John Manufacturing Company

(16) Marine Service Inc.

(17) Marshall & Company, Inc.

(18) Richardson, Dana & Co., Inc.

(19) Alfred B. Sherman, doing business as Campbell-Built Products

(20) The Southington Hardware Manufacturing Company

(21) Surrette Storage Battery Co., Inc.

(22) W. & J. Tiebout, Inc.

(23) Kenneth M. Walbridge and Robert P. Walbridge, co-partners doing business as Walbridge Bros.

(24) Wilcox-Crittenden Division of North & Judd Manufacturing Co.

(25) Winde-McCormick Lumber Company

(26) Wickwire Spencer Steel Division, The Colorado Fuel and Iron Corporation

(27) Maximilian P. Wurf, doing business as Transplastics Fabricating Co., Plaintiffs,

v.

The United States of America, Defendant.

Petition—Filed December 21, 1956

[fol. 2] Plaintiffs, Cecil W. Armstrong and Marie I. Armstrong, co-partners doing business under the firm name and style of Armstrong Products Company; Baltimore Copper Paint Co., a division of Oliver Reeder & Son, Inc.; Orrin F. Benner, doing business under the firm name and style of Thomaston Steel Works; Mason C. Carter; Chase Brass & Copper Co., a body corporate; Columbian Bronze Corp.; Maurice W. Dennison, Thomas G. Lynah & Charles J. Winkler, Jr., Trustees doing business under the firm name and style of Braman, Dow & Co., a Massachusetts trust; The Dexolium Corporation; [illegible]ywood-Wakefield Company, a body corporate; E. F. Hutchinson, doing business under

the firm name and style of Ned's Garage; Kainer & Company, a body corporate; O. O. Keiver Lumber Corp.; Kennebec Wharf & Coal Company, a division of Staples Coal Company, a body corporate; Rienia J. Kuhls, Anna Kuhls Yates, Gladys Kuhls Woodel and Frieda Kuhls Woodel, co-partners doing business under the firm name and style of H. B. Fred Kuhls; Le John Manufacturing Company, a body corporate; Marine Service Inc.; Marshall & Company, Inc.; Richardson, Dana & Co., Inc.; Alfred B. Sherman doing business under the firm name and style Campbell-Built Products; the Southington Hardware Manufacturing Company, a body corporate; Surrette Storage Battery Co., Inc.; W. & J. Tiebout, Inc.; Kenneth M. Walbridge and Robert P. Walbridge, co-partners doing business under the firm name and style Walbridge Bros.; Wilcox-Crittenden Division of North & Judd Manufacturing Co., a body corporate; Winde-McCormick Lumber Company, a body corporate; Wickwire Spencer Steel Division, The Colorado Fuel and Iron Corporation; Maximilian P. Wurf doing business under the firm name and style Transplastics Fabricating Co.; (all of the foregoing individual plaintiffs, co-partnerships and trustees being hereinafter referred to by their respective firm names in each instance that business is done under a firm name); by their attorneys, respectfully represent:

[fol. 3] 1. Plaintiffs are five individually-owned companies, three partnerships, a Massachusetts trust and 18 corporations, all specifically designated along with the locations of their respective principal offices in Appendix A, which is annexed hereto and made a part hereof.

2. Under date of March 26, 1954, the Department of the Navy awarded contract NObs-3572 to the Rice Shipbuilding Corporation (hereinafter referred to as "Rice") to supply eleven 40-foot personnel boats, Mark II, which were to be constructed at Rice's plant at East Boothbay, Maine.

3. Rice was unable to complete the construction of the eleven boats, and on August 2, 1955, the defendant terminated the subject contract for default.

4. Pursuant to the request of the Contracting Officer, Rice, under date of August 4, 1955, executed an itemized "Instrument of Transfer of Title" which had been submitted to it by the Contracting Officer. This instrument, in effect, transferred to the defendant legal title to all of the materials, supplies and hulls in the possession or control of Rice which were incorporated or to be incorporated into the boats being constructed under the subject contract.

5. At the special instance and request of Rice, each of the plaintiffs furnished certain supplies, materials and equipment for application on and use in connection with the construction of the said boats to be manufactured by Rice for the defendant in performance of the subject contract. As a consequence of and in consideration of the furnishing of work, labor, services, materials and supplies by the plaintiffs, there became due and now remain owing to each of the plaintiffs the respective sums set forth in Appendix A annexed hereto and made a part hereof.

6. Pursuant to the provisions of section 13, chapter 178 of the Revised Statutes of Maine, 1954, each of the plaintiffs had a good and valid lien on the said boats and hulls and on the materials and supplies furnished by each plaintiff on the dates of the transfer of title and possession of the said hulls, materials and supplies to the defendant.

[fol. 4] 7. Subsequent to taking title, the defendant took possession of all items listed in the "Instrument of Transfer of Title" and, upon information and belief, removed them from the State of Maine, thereby depriving the plaintiffs of their right to exercise their liens. The defendant did not take any legal steps which foreclosed the rights of the plaintiffs to their respective liens.

8. Upon taking title to and possession of the said hulls, materials and supplies, the defendant became obligated under the Fifth Amendment to the Constitution of the United States to pay to each of the plaintiffs just compensation for their respective lien and property rights in the said hulls, materials and supplies.

9. Despite a demand for the same, the defendant has failed and refused to pay just compensation to the plain-

tiffs for the destruction of their lien and property rights to the hulls, materials and supplies taken by the defendant.

10. No other action has been had on the claims of plaintiffs, nor on any of them, in Congress or in any of the departments of the Government, except as hereinbefore alleged.

Wherefore, the plaintiffs pray for judgment against the defendant in the aggregate sum of $23,732.72 in accordance with their respective interest, as set forth in the annexed schedule, together with interest as part of just compensation, together with appropriate costs.

Solomon Dimond, Attorney for Plaintiffs, 1011 New Hampshire Avenue, N.W., Washington 7, D.C.,
Of Counsel, Burton R. Thorman.

[fol. 5]

Appendix "A" to Petition

Rice Shipbuilding Corp.—NOBS No. 3572

	Name of Plaintiff	Location of Principal Office	Amount of Claim
1.	Cecil W. Armstrong and Marie I. Armstrong, co-partners d/b/a Armstrong Products Company	Warsaw, Indiana	$ 134.3
2.	Baltimore Copper Paint Co., a division of Oliver Reeder & Son, Inc.	Baltimore, Maryland	153.9
3.	Orrin F. Benner, d/b/a Thomaston Steel Works	Thomaston, Maine	477.7
4.	Mason C. Carter	Woolwich, Maine	39.47
5.	Chase Brass & Copper Co., a body corporate	Waterbury, Connecticut	30.36
6.	Columbian Bronze Corp.	Freeport, Long Island, New York	904.06
7.	Maurice W. Dennison, Thomas G. Lynah, Charles J. Winkler, Jr., Trustees d/b/a Braman, Dow & Co., a Massachusetts trust	Boston, Massachusetts	442.57
8.	The Dexolium Corporation	South Norwalk, Conn.	529.37
9.	Heywood Wakefield Company, a body corporate	Gardner, Massachusetts	320.00
10.	E. F. Hutchinson d/b/a Ned's Garage	Boothbay Harbor, Maine	51.51
11.	Kainer & Company, a body corporate	Chicago, Illinois	3376.67
12.	O. O. Keiver Lumber Corp.	Beverly, Massachusetts	1349.24
13.	Kennebec Wharf & Coal Company, a division of Staples Coal Company, a body corporate	Boston, Massachusetts	211.19
14.	Hiema J. Kuhls, Anna Kuhls Yates, Gladys Kuhls Woodel and Frieda Kuhls Woodel, co-partners d/b/a H. B. Fred Kuhls	Brooklyn, New York	115.98
15.	Le John Manufacturing Company, a body corporate	Huntington, West Virginia	1320.00
16.	Marine Service Inc.	Boothbay Harbor, Maine	402.33
17.	Marshall & Company, Inc.	Boston, Massachusetts	165.63
18.	Richardson, Dana & Co., Inc.	Portland, Maine	784.70
19.	Alfred B. Sherman d/b/a Campbell-Built Products	Boothbay Harbor, Maine	106.27
20.	The Southington Hardware Manufacturing Company, a body corporate	Southington, Connecticut	334.80
21.	Surrette Storage Battery Co., Inc.	Salem, Massachusetts	1298.09
22.	W. & J. Tiebout, Inc.	New York, New York	2857.56
23.	Kenneth M. Walbridge and Robert P. Walbridge, co-partners d/b/a Walbridge Bros.	Boothbay Harbor, Maine	75.18
24.	Wilcox-Crittenden Division of North & Judd Manufacturing Co., a body corporate	Middletown, Connecticut	403.26
25.	Winde-McCormick Lumber Company, a body corporate	Charlestown, Massachusetts	6221.37
26.	Wickwire Spencer Steel Division of the Colorado Fuel and Iron Corporation	Buffalo, New York	1193.50
27.	Maximilian P. Wurf d/b/a Transplastics Fabricating Co.	Boston, Massachusetts	160.38
		TOTAL	$23,732.72

[fol. 7]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S ANSWER—Filed June 21, 1957

Defendant, for its answer to the petition herein, admits, denies and alleges as follows:

1. Denies the allegations in paragraph 1 of the petition for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2. Admits the allegations in paragraph 2 of the petition.

3. Admits, in answer to the allegations in paragraph 3 of the petition, that the contractor did not complete the construction of the 11 boats, and that by letter dated August 2, 1955, defendant terminated the subject contract for default. Denies, for lack of knowledge or information sufficient to form a belief as to the truth thereof, the allega-
[fol. 8] tion in said paragraph that the contractor was "unable" to complete the construction.

4. Admits, in answer to the allegations in the first sentence in paragraph 4 of the petition, that as of August 4, 1955, the contractor executed an itemized "Instrument of Transfer of Title Under Contract NObs-3572." Denies the allegation that such execution was "pursuant to the request of the Contracting Officer," and alleges the fact to be that such execution was at the direction of the Contracting Officer pursuant to Clause 11(d) of the General Provisions of said contract. Counsel for defendant has been unable to obtain knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said first sentence, and defendant, therefore, denies the same. Submits that the remaining allegations in said paragraph 4 are conclusions of law which do not require an answer; insofar as they may be deemed to be allegations of material fact, they are denied. By way of further answer, defendant states that the subject matter of said instrument was the contractor's right, title and interest in and to certain "manufacturing materials," within the mean-

ing of the contract, as were designated by a representative of defendant.

5. Denies the allegations in paragraph 5 of the petition for lack of knowledge or information sufficient to form a belief as to the truth thereof.

6. Submits that the allegations in paragraph 6 are conclusions of law which do not require an answer; insofar as they may be deemed to be allegations of material fact, they are denied.

[fol. 9] 7. Admits, in answer to the allegations in the first sentence in paragraph 7 of the petition, that subsequent to the execution of the said "Instrument of Transfer of Title Under Contract NObs-3572," defendant took possession of items listed in said instrument, and removed them from the State of Maine. By way of further answer, defendant states that said items were removed to other shipyards for completion of the supplies called for by the subject contract. Counsel for defendant has been unable to obtain knowledge or information sufficient to form a belief as to the truth of the allegations that defendant took possession of "all" items listed, and removed "all" items from the State of Maine, and defendant, therefore, denies the same. Submits that the remaining allegations in said paragraph 7 are conclusions of law which do not require an answer; insofar as they may be deemed to be allegations of material fact, they are denied.

8. Submits that the allegations in paragraph 8 of the petition are conclusions of law which do not require an answer; insofar as they may be deemed to be allegations of material fact, they are denied. By way of further answer, defendant specifically denies that defendant is obligated to pay to each, or any, of the plaintiffs any sum whatsoever.

9. Counsel for defendant has been unable to obtain knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the petition that plaintiffs made "demand for" and "defendant has failed and refused to pay" the alleged claim which is the subject of plaintiffs' petition, and defendant, therefore,

[fol. 10] denies said allegations. Denies, in answer to the remaining allegations in said paragraph, that defendant destroyed any lien or property rights in plaintiffs to the materials which were the subject of the "Instrument of Transfer of Title Under Contract NObs-3572," denies that such materials were "taken" by defendant, and denies that plaintiffs are entitled to any amount whatsoever as "just compensation" from defendant. Denies all allegations of material fact in said paragraph 9 which are not herein admitted, denied or otherwise responded to.

10. Counsel for defendant has been unable to obtain knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the petition, and defendant, therefore, denies the same.

11. Denies all allegations of material fact in the petition which are not herein admitted, denied or qualified.

Wherefore, defendant demands judgment dismissing plaintiff's petition.

George Cochran Doub, Assistant Attorney General, Civil Division.

Kathryn H. Baldwin, Attorney, Civil Division, Department of Justice.

[fol. 13]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—
Filed April 10, 1958

Defendant moves the Court for summary judgment on the ground that there is no genuine issue of material fact, and, as a matter of law, defendant is entitled to judgment dismissing plaintiffs' petition. In support of its motion, defendant relies upon the pleadings as filed, and its brief and exhibits submitted herewith.

[fol. 37]

APPENDIX TO MOTION

Affidavit of F. L. Ruhlman

District of Columbia: ss

F. L. Ruhlman, being first duly sworn, deposes and says that he is the Assistant Chief of the Bureau of Ships of the Department of the Navy with the rank of Captain; that in such capacity, his official duties include, among other things, the general supervision of official records pertaining to shipbuilding contracts made by the Bureau of Ships, Department of the Navy. Such official records reveal the following:

On March 26, 1954, there was awarded to Rice Shipbuilding Corporation, East Boothbay, Maine, by the Department of the Navy, Contract NObs-3572 for the construction of eleven 40' personnel boats, Mark II, for the total sum of $175,900, a copy of which contract is attached hereto as Exhibit A.

These personnel boats are constructed to specifications of the Department of the Navy, and they are, among other things, used aboard and in operation with such combat vessels as aircraft carriers, battleships and cruisers.

The contractor entered on performance of the contract, and by letter dated August 2, 1955, the contractor was notified of termination of the contract for default in performance, and was directed, pursuant to Clause 11(d) of the General Provisions of the contract, to transfer to the Government title to the partially completed vessels and to such manufacturing materials, within the meaning of the contract, as should be designated by the Government, a copy of which notice is attached hereto as Exhibit B. The contractor did not appeal the termination of the contract.

Pursuant to such direction, the contractor executed an Instrument of Transfer of Title Under Contract NObs-3572, dated August 4, 1955, transferring to the Government all of the contractor's right, title and interest in and to the said property, a copy of which instrument is attached hereto as Exhibit C.

[fol. 38] All of the manufacturing material and equipment, title to which was transferred to the Government pur-

suant to said Instrument of Transfer of Title, was shipped by the Supervisor of Shipbuilding USN and Naval Inspector of Ordnance at Bath, Maine, to three Naval Shipyards for completion of the ten uncompleted boats. Hull Nos. C-73968 and C-73969, together with outfit, equipment and materials, were shipped to and received by the Norfolk Naval Shipyard (Exhibits D and D-1, hereto); hulls Nos. C-73970 through C-73972, together with outfit, equipment and materials, were shipped to and received by the New York Naval Shipyard (Exhibits E and E-1, hereto); and hulls Nos. C-73973 through C-73977, together with outfit, equipment and materials were shipped to and received by the Philadelphia Naval Shipyard (Exhibits F and F-1, hereto). All materials so shipped to such Naval Shipyards, with the minor exceptions noted in the records of the Philadelphia Naval Shipyard, were used in completion of the said boats (Exhibits D, E and F).

Completion costs of said boats, exclusive of equipment shipped from Maine and used in completion, were:

Norfolk Naval Shipyard	$ 15,151.47
New York Naval Shipyard	43,915.11
Philadelphia Naval Shipyard	108,110.86

(Exhibits D-2, E-2 and F-2, hereto).

Between June 21, 1954, and April 27, 1955, the Government paid to the contractor as progress payments on said contract the total amount of $141,387.20, which amount represented estimated earnings of $145,760.00, less the reserve of 3% of payments retained in accordance with the terms of the contract (Exhibit G, hereto).

By letter dated March 13, 1957, demand was made upon the contractor for excess costs in the amount of $146,470.28 [fol. 39] (Exhibit H, hereto), which costs were computed by the Contracting Officer as follows:

Original Contract price	$175,900.00
Adjudicated change orders:—none	
Amendments increasing or decreasing contract price:—none	
Progress payments made to contractor	141,387.20
Undisbursed funds on contract	$ 34,512.80

Costs incurred by Government in having ten undelivered vessels completed by Naval Shipyards:			
Protection costs from date of termination to date of shipment		$ 4,388.74	
Cost of preparing the ten hulls for shipment		6,450.00	
Transportation costs (3 hulls to New York, 2 hulls to Norfolk, 5 hulls to Philadelphia)		4,007.00	
Completion Costs:			
New York	$ 43,915.11		
Norfolk	15,151.47		
Phila.	107,560.76	$166,627.34	
Total costs incurred by Government			$181,473.08
Less:			
(a) Undisbursed funds on contract NObs-3572		34,512.80	
(b) Credit for estimated work accomplished by Rice on unadjudicated change orders		490.00	
			35,002.80
Excess costs			$146,470.28

(Exhibit I, hereto). Subsequent to such computation an additional amount of $550.10 was paid for charges for materials used by the Philadelphia Naval Shipyard on the boats completed by that yard (Exhibit F-2). No part of said excess costs has been paid; and the contractor did not [fol. 40] appeal the assessment of such costs.

Further, affiant saith not.

F. L. Ruhlman

Subscribed and sworn to before me this 9th day of April, 1958.

Katharyne A. Thomason, Notary Public, District of Columbia, my Commission expires Sept. 30, 1961.

(Notarial Seal)

[fol. 41]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT—
Filed May 21, 1958

Plaintiffs move the Court for an order granting summary judgment for the plaintiffs on the grounds that there is no genuine issue as to any material fact, and the plaintiffs are entitled to judgment as a matter of law. In support of this motion, the plaintiffs rely upon the affidavits of Leonard Salter, Trustee in Bankruptcy, dated April 29, 1957, and of Henry Halpern, dated April 26, 1957, which are annexed hereto and made a part hereof, and upon plaintiffs' brief in support of this motion and in opposition to the defendant's motion for summary judgment.

[fol. 59]

APPENDIX "A" TO MOTION

Affidavit of Henry Halpern

State of Massachusetts
County of Suffolk

Henry Halpern, of 30 Huntington Avenue, Boston 16, Massachusetts, being duly sworn, deposes and says that:

1. He was the President of Rice Shipbuilding Corporation at all times during the performance of Contract No. NObs 3572, and until such time as the corporation was adjudicated a bankrupt.

2. The following claims, which are taken from the books of the corporation, are true and correct and represent work, labor, services, materials, supplies or equipment furnished to the corporation for use in connection with Department of the Navy Contract No. NObs 3572:

Name and Address	*Consideration*	*Amount*
Armstrong Products Co. Argonne Road, Warsaw, Indiana Oliver Reeder & Son	Material	$ 134.30
Baltimore Copper Paint Co. 501 Key Highway, Baltimore 30, Md.	Material	153.00
Thomaston Steel Works 3 Green Street, Thomaston, Maine	Material	477.78
Mason C. Carter Woolwich, Maine	Services	316.47
[fol. 60]		
Chase Brass & Copper Co. 236 Grand Street, Waterbury, Conn.	Material	30.58
Columbian Bronze Corp. 216 N. Main Street, Freeport, N.Y.	Material	904.08
Braman Dow & Co. 239 Causeway Street, Boston, Mass.	Material	442.57
The Dexolium Corp. 29 Haviland Street, S. Norwalk, Conn.	Material	529.37
Heywood-Wakefield Co. Gardner, Massachusetts	Material	320.00
Ned's Garage Boothbay Harbor, Maine	Merchandise	51.51
Kainer & Co. 763 W. Lexington St., Chicago, Ill.	Material	3376.67
O. O. Keiver Lumber Corp. 82 River Street, Beverly, Mass.	Material	1346.24

Name and Address	*Consideration*	*Amount*
Staples Coal Co., d b a Kennebec Wharf & Coal Co. 80 Front Street, Bath, Maine	Material	$ 211.19
H. B. Fred Kuhls 6413 Third Ave., Brooklyn, N.Y.	Material	115.98
Le John Manufacturing Co. 111 22nd St., Huntington, West Va.	Material	1320.00
Marine Service, Inc. 102 Commercial St., Boothbay Harbor, Me.	Material	402.33
Marshall & Co., Inc. 368 Congress Street, Boston, Mass.	Material	165.63
Richardson, Dana & Co. 464 Commercial Street, Portland 3, Me.	Material	784.70
Campbell-Built Products Boothbay Harbor, Maine	Material	106.27
The Southington Hardware Mfg. Co. 168 Center St., Southington, Conn.	Material	334.80
Surette Storage Battery Co. Jefferson Avenue, Salem, Mass.	Material	1298.00
W. & J. Tiebout, Inc. 64 Front Street, New York, N. Y.	Material	2857.56
Walbridge Bros. Wiscasset Road, Boothbay Harbor, Me.	Material	75.18
[fol. 61]		
Wilcox-Crittenden, Div. of North & Judd Mfg. Co. High & Warwick Sts., Middletown, Conn.	Material	403.26
Winde-McCormack Lumber Co. 412 Medford St., Charlestown, Mass.	Material	6221.37
Wickwire Spencer Steel Div. of the Colorado Fuel & Iron Corp. 361 Delaware Avenue, Buffalo, N.Y.	Material	1193.50
Transplasties Fabricating Co. 34 Cambria Street, Boston 15, Mass.	Material	160.38
	Total	$23,732.72

3. The corporation did not have any other business from the date of its organization until the date it was adjudicated a bankrupt other than the performance of the said contract NObs 3572.

4. To the best of my knowledge and belief, the corporation had no claims or offsets which could be applied in reduction of the above-listed claims.

Henry Halpern

Sworn to before me this 26th day of April, 1957.

Philip Collier, Notary Public.

(Seal)

[fol. 63]

APPENDIX "B" TO MOTION

Affidavit of Leonard Salter

State of Massachusetts
County of Suffolk

Leonard Salter, of One Court Street, Boston 8, Massachusetts, being duly sworn, deposes and says that:

1. He is an attorney-at-law, and was elected Trustee in Bankruptcy of Rice Shipbuilding Corporation and qualified as such and is still serving in that capacity.

2. The following creditors of Rice Shipbuilding Corporation have duly filed their claims with the bankrupt estate:

Name and Address	*Consideration*	*Amount*
Armstrong Products Co. Argonne Road, Warsaw, Indiana	Material	$ 134.30
Oliver Reeder & Son Baltimore Copper Paint Co. 501 Key Highway, Baltimore 30, Md.	Material	153.00
Thomaston Steel Works 3 Green Street, Thomaston, Maine	Material	477.78
Mason C. Carter Woolwich, Maine	Services	316.47
Chase Brass & Copper Co. 236 Grand Street, Waterbury, Conn.	Material	30.58
[fol. 64]		
Columbian Bronze Corp. 216 N. Main Street, Freeport, N.Y.	Material	904.08
Braman Dow & Co. 239 Causeway Street, Boston, Mass.	Material	442.57
The Dexolium Corp. 29 Haviland Street, S. Norwalk, Conn.	Material	529.37
Heywood-Wakefield Co. Gardner, Massachusetts	Material	320.00
Ned's Garage Boothbay Harbor, Maine	Merchandise	51.51
Kainer & Co. 763 W. Lexington St., Chicago, Ill.	Material	3376.67
O. O. Keiver Lumber Corp. 82 River Street, Beverly, Mass.	Material	1346.24

Name and Address	*Consideration*	*Amount*
Staples Coal Co., d b'a Kennebec Wharf & Coal Co. 80 Front Street, Bath, Maine	Material	$ 211.19
H. B. Fred Kuhls 6413 Third Ave., Brooklyn, N.Y.	Material	115.98
Le John Manufacturing Co. 111 22nd St., Huntington, West Va.	Material	1320.00
Marine Service, Inc. 102 Commercial St., Boothbay Harbor, Me.	Material	402.33
Marshall & Co., Inc. 368 Congress Street, Boston, Mass.	Material	165.63
Richardson, Dana & Co. 464 Commercial Street, Portland 3, Me.	Material	784.70
Campbell Built Products Boothbay Harbor, Maine	Material	106.27
The Southington Hardware Mfg. Co. 168 Center St., Southington, Conn.	Material	334.80
Surette Storage Battery Co. Jefferson Avenue, Salem, Mass.	Material	1298.00
W. & J. Tiebout, Inc. 64 Front Street, New York, N. Y.	Material	2857.56
Walbridge Bros. Wiscasset Road, Boothbay Harbor, Me. [fol. 65]	Material	75.18
Wilcox Crittenden, Div. of North & Judd Mfg. Co. High & Warwick Sts., Middletown, Conn.	Material	403.26
Winde-McCormack Lumber Co. 412 Medford St., Charlestown, Mass.	Material	6221.37
Wickwire Spencer Steel Div. of the Colorado Fuel & Iron Corp. 361 Delaware Avenue, Buffalo, N. Y.	Material	1193.50
Transplastics Fabricating Co. 34 Cambria Street, Boston 15, Mass.	Material	160.38
	Total	$23,732.72

3. The foregoing claims, after investigation, have been accepted as true and correct, and that, to the best of his knowledge and belief, there are no claims or offsets which the bankrupt estate has against the above-listed creditors.

4. There are no assets in the estate, nor will any become available to the estate, with which to pay the above-listed creditors.

Sworn to before me this 29th day of April, 1957.

/s/ Hyman Gessman
Notary Public (Seal)

[fol. 69]

IN THE UNITED STATES COURT OF CLAIMS

No. 532-56

CECIL W. ARMSTRONG, et al.

v.

THE UNITED STATES

Mr. Burton R. Thorman for the plaintiffs. Mr. Solomon Dimond was on the brief.

Miss Kathryn H. Baldwin, with whom was Mr. Assistant Attorney General George Cochran Doub, for the defendant.

OPINION—January 14, 1959

On defendant's and plaintiffs' motions for summary judgment.

JONES, *Chief Judge*, delivered the opinion of the court:

Petitioners were subcontractors under a contract executed with the Department of the Navy for the construction of military vessels. They bring this action to recover just compensation under the Fifth Amendment to the Constitution for property rights allegedly taken by defendant. Those rights consisted of statutory liens which plaintiffs claim were acquired under Maine law by reason of having provided materials and services in the construction of the vessels.

There appears to be substantial agreement between the parties as to the circumstances giving rise to plaintiffs' claim, and both parties have therefore moved for summary judgment.

In March 1954, defendant, acting through the Department of the Navy, entered into a contract for the construc-

tion of 11 personnel boats with the Rice Shipbuilding Cor-[fol. 70] poration of East Boothbay, Maine.[1] For this work defendant agreed to pay $175,900.

After performance of the contract had begun, defendant commenced to make progress payments to the contractor based upon the estimated percentages of the work completed, less 3 percent retained percentages. At the request of the Rice Shipbuilding Corporation, plaintiffs furnished it with supplies, materials, and equipment in connection with its performance of the Navy contract. It is alleged in the petition that amounts are due the plaintiffs as consideration for furnishing such materials and supplies, and for work, labor, and services performed in connection therewith.

In August 1955, the Rice Shipbuilding Corporation was notified by letter that defendant had terminated the contract for default because of Rice's failure to deliver the boats within the specified time and to make satisfactory progress in performance of the contract. The contractor was also informed that defendant would exercise its rights under clause 11 (c) of the contract and have the undelivered vessels completed by another shipbuilder, with the contractor held liable for any excess costs of completion. The final paragraph of the letter directed the contractor, pursuant to clause 11 (d) of the general provisions of the contract, to transfer title to the Government of the partially completed vessels and certain "manufacturing materials,"[2] and to deliver those vessels and materials in

[1] Personnel boats of the type under contract were to be used aboard and in connection with the operation of combat vessels such as aircraft carriers, battleships, and cruisers.

[2] Clause 11 (d) of the contract's general provisions provided:

"11. Default.

* * * * *

"(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called 'manufacturing materials') as the Contractor has specifically pro-

the manner and at the time specified by a designated representative of the Navy.

[fol. 71] As a consequence, the contractor executed a document entitled "Instrument of Transfer of Title" by which it transferred to defendant all of the transferor's right, title, and interest in the "manufacturing materials" as specified by defendant. The Government thereafter removed these materials from Maine and delivered them to naval shipyards at New York, Philadelphia, and Norfolk where the boats were completed, the materials transferred being used in their construction.[3]

Prior to termination of the contract, defendant paid the Rice Shipbuilding Corporation $141,387.20 in the form of progress payments. The cost of completing the boats amounted to $166,627.34, exclusive of the materials transferred to defendant and subsequently used in the construction work. This added cost to the Government resulted in the assessment of "excess costs" against the contractor, determined by the contracting officer to be $146,470.28. Demand was made upon the contractor for payment of these excess costs. No part of this amount has been paid. The contractor, now adjudicated a bankrupt, did not appeal the termination of the contract or the assessment of excess costs.

Plaintiffs' case rests on the assertion that they acquired "good and valid" liens on the vessels and the materials

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duced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price for completed supplies delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled 'Disputes'."

[3] When the contract was terminated, one vessel had been completed and delivered to the Government, and the remaining ten vessels were in various stages of completion.

furnished for their construction under section 13, chapter 178 of the Revised Statutes of Maine, 1954.[4] It was these liens which were allegedly taken by the Government when it obtained title to the partially completed vessels and manufacturing materials, and which were subsequently removed from Maine for completion elsewhere. The immediate question before us is thus whether plaintiffs had [fol. 72] the "property rights" which they claim. If not, the Government has taken nothing.

It is Federal law, and not the law of a particular state, which governs the construction of contracts to which the United States is a party. *United States* v. *Allegheny County*, 322 U.S. 174 (1944). This principle is founded upon the supremacy clause of the Constitution of the United States,[5] which was designed to prevent the disparities, confusions, and conflicts that would ensue were the Federal authority subjected to state controls.

The Supreme Court on several occasions has stated in general terms that laborers and materialmen can acquire no lien on a Government work. *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 241 (1947); *Equitable Surety Co.* v. *McMillan*, 234 U.S. 448, 455 (1914); *Hill* v. *American Surety Company of New York*, 200 U.S. 197, 203 (1906). While the Supreme Court has not been called upon to determine the question of whether subcontractors may obtain recovery against the United States under the Fifth Amend-

[4] Section 13, chapter 178, Revised Statutes of Maine, 1954, provides as follows:

"'Whoever furnishes labor or materials for building a vessel has a lien on it therefor, which may be enforced by attachment thereof within 4 days after it is launched; but if the labor and materials have been so furnished by virtue of a contract not fully completed at the time of launching of the vessel, the lien may be enforced within 4 days after such contract has been completed. He also has a lien on the materials furnished before they become part of the vessel, which may be enforced by attachment; and the owners of any dry dock or marine railway used for any vessel have a lien on said vessel for the use of said dock or railway, to be enforced by attachment within 4 days after the last day in which the same is used or occupied by said vessel."

[5] Article VI, Clause 2.

ment "taking" theory, the comprehensive language employed in *Munsey Trust Company* at 241, "nothing is more clear than that laborers and materialmen do not have enforceable rights against the United States for their compensation", would seem to preclude that basis for recovery.

Plaintiffs contend that the above cited cases did not place in issue the subject matter of the contracts. Thus, whether they involved "public works" was not considered by the court. It is argued that a public work, such as to deny liens [fol. 73] to laborers and materialmen, is one where title to the work rests initially with the Government, or is acquired by it as the work progresses. Plaintiffs refer us to *United States* v. *Ansonia Brass and Copper Co.*, 218 U.S. 452 (1910), in support of this assertion. In that case the Supreme Court had under review contracts for the construction of three vessels for the Federal Government. Creditors of the contractor there asserted liens under the supply-lien law of Virginia. A receiver was appointed by the state court and he took possession of the property of the contractor, including the three vessels. In its decision, the Court affirmed the Supreme Court of Appeals of Virginia's opinion that the state liens were superior to any claim or lien of the Government as to two of the vessels, but reversed that court's identical ruling as to the third vessel, holding that title to it passed to the United States under the terms of the contract providing for its construction. Plaintiffs read that case as disallowing state lien claims

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Statutes providing for payment bonds on Government contracts were no doubt enacted to furnish a bond obligation in place of that security which might otherwise be obtained by attaching a lien to the property. See *Equitable Surety Company* v. *McMillan*, *supra*, at p. 455; also *Hill* v. *American Surety Co. of New York*, *supra*.

The Act of August 24, 1935, 49 Stat. 793, 40 U. S. C. § 270a, commonly known as the "Miller Act," generally provides for a payment bond on a contract "for the construction, alteration, or repairs of any public building or public work of the United States." Acting under the authority of section 270e of that Act, the Secretary of Navy waived the bond requirement as to the instant contract. That section of the law allows waiver of the bond obligation "with respect to contracts for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, munitions, materiel, or supplies of any kind or nature for the Army or Navy, regardless of the terms of such contracts as to payment or title * * *".

upon property forming the basis of a Government construction contract *only* where the contract provides that title to the work is to pass to the Government as progress payments are made. They argue that where defendant under the contract merely reserves title to the construction materials, subject to transfer to the Government upon the contractor's default, as clause 11 (d) did here, subcontractors' statutory liens will attach to the materials before the Government exercises its right to acquire title. We cannot agree, however, that the *Ansonia* decision is to be so narrowly interpreted.[7]

In the recent case of *Thomson Machine Works Co.* v. *Lake Tahoe Marine Supply Co.*, 135 F. Supp. 913 (1955), it was held that an action would not lie to quiet title and [fol. 74] foreclose an alleged mechanics lien, provided under California law, upon certain propeller shafts supplied the prime contractor for the construction of utility boats under Government contract. There, upon the contractor's default, the Government acquired title to the shafts under a contract provision identical with the one we are here considering. The court made the following statements in reference to the import of the *Ansonia* decision [p. 915]:

> In the factual situation applicable to the Mohawk and the Galveston [two of the three vessels involved in the *Ansonia* case] the court held that the state lien law was applicable. The reasons for this holding, in

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[7] Apparent Congressional concern over the holding in the *Ansonia* decision was reflected in the enactment in 1911 of legislation giving the Government a paramount lien as to progress payments made in the construction of naval vessels. The statute, 34 U. S. C. § 582, in pertinent part reads as follows:

> "Partial payments during work. The Secretary of the Navy is authorized * * * to make partial payments from time to time during the progress of the work under all contracts made under the Navy Department for public purposes, but not in excess of the value of work already done; and the contracts made shall provide for a lien in favor of the Government, which lien is made paramount to all other liens, upon the articles or things contracted for on account of all payments so made * * *."

Substituted section 31 of the additional general provisions of the instant contract specifies this paramount lien in subsection (b).

this court's opinion, were twofold. *First, no provision was contained in the contracts for these vessels as to passing of title.* Secondly, the Supreme Court analyzed the entire contracts, and stated, "We think that this contract, as the one for the Mohawk, was made in recognition of the rights of those who should furnish work or material for the vessel to secure their claims by liens which it was made the duty of the contractor to provide for in order to protect the title of the United States." [Emphasis added.]

We think the district court's interpretation of *Ansonia* is sound. The Supreme Court in that case was faced with the problem of discovering the intent of the contracting parties. Looking to the agreement before us, it is obvious that defendant contracted for the completion of the vessels with a view to their later use in a legitimate governmental function. For this reason the contract included a clause for the vesting of title in the Government. Prior to completion of the vessels defendant acquired title to them and the materials to be used in their construction. This was done according to the provisions of the contract. As we interpret it, the contract provided the Government with inchoate title to the various materials supplied the contractor by petitioners. In this sense the contract embraced a "public work" which was beyond the reach of subcontractors' liens. *United States* v. *Mansey Trust Co., supra; Equitable Surety Co.* v. *McMillan, supra; Hill* v. *American Surety Company of New York, supra.* Absent the "property rights" which the [fol. 75] petitioners here claim, there was no basis for the Government's alleged taking.

Defendant's motion for summary judgment is granted, and plaintiffs' motion is denied. The plaintiffs' petition will be dismissed.

It is so ordered.

Laramore, Judge; Madden, Judge; and Whitaker, Judge, concur.

[fol. 77] *Filing of Plaintiff's motion for rehearing*

On February 13, 1959, plaintiffs filed a motion for rehearing.

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—May 13, 1959

This case comes before the court on plaintiffs' motion, filed February 13, 1959, for rehearing with respect to the court's decision of January 14, 1959. Defendant's opposition thereto was filed March 23, 1959, and plaintiffs' reply on April 2, 1959. Upon consideration thereof,

It Is Ordered this thirteenth day of May, 1959, that plaintiffs' motion for rehearing be and the same is denied.

By the Court, Marvin Jones, Chief Judge.

[fol. 79] Clerk's Certificate (omitted in printing).

[fol. 80] [File endorsement omitted]

IN THE UNITED STATES COURT OF CLAIMS

No. 532-56

CECIL W. ARMSTRONG, et al., Plaintiffs,

v.

THE UNITED STATES, Defendant.

EXHIBITS TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT THEREOF—Filed April 10, 1958

Exhibits A thru I

Exhibit A

(See Opposite)

[fol. 81]

Standard Form 33
Prescribed by General Services Administration, Nov. 1949 Edition

AWARD
(SUPPLY CONTRACT)

CONTRACT NO. NObs 4572
ORDER NO. (If any)

PAGE NO. 1 | NUMBER OF PAGES OF AWARD 1

DATE OF AWARD: MAR 8 1954

INVITATION NO. 7324-S

TO (Contractor and address): Rice Shipbuilding Corporation
East Boothbay, Maine

ISSUED BY: Department of the Navy
Bureau of Ships
Washington 25, D. C.

INVOICE FOR PAYMENT SHOULD BE MAILED TO (in quadruplicate): Supervisor of Shipbuilding USN and Naval Inspector of Ordnance, Bath, Maine

PAYMENT WILL BE MADE BY: U.S. Navy Regional Accounts Office
Boston, Massachusetts

Your bid on the above numbered Invitation for Bids is hereby accepted as to the items enumerated below with the additions or changes made by you, which additions or changes are set forth in full below.

ITEM NO	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	This contract is made pursuant to the provisions of Section 714 (f)(2) of the Defense Production Act, as amended.				
	LOT II				
5.	40' Personnel Boat, Mark II, for dely to Norfolk, Va.	3		$16,200.00	$ 48,600.00
6.	40' Personnel Boat, Mark II, for dely to Brooklyn, N.Y.	3		$15,900.00	$ 47,700.00
7.	40' Personnel Boat, Mark II, for dely to Boston, Mass.	2		$15,800.00	$ 31,600.00
8.	40' Personnel Boat, Mark II, for dely to Philadelphia, Pa.	3		$16,000.00	$ 48,000.00
	INSPECTION: At Contractor's Plant, East Boothbay, Maine, by the Supervisor of Shipbuilding USN and Naval Inspector of Ordnance, Bath, Maine.				
	POINT OF ACCEPTANCE: AT POINT OF DELIVERY.				
	DELIVERY: As specified in the Schedule.				
	DMS CLASSIFICATION Class "A" Product.				
	CERTIFICATION DO-A3; certified under DMS Regulation #1.				
				TOTAL AMOUNT	$175,900.00

This Award consummates the contract, which consists of the following documents, including any Continuation Sheets hereto: (a) the Government's Invitation for Bids and your Bid, (b) the Schedule, (c) the General Provisions, and (d) the Government's Award. No further contractual document is necessary.

UNITED STATES OF AMERICA

BY _____

CONTRACTING OFFICER

Standard Form 33
Nov. 1949 Edition

Standard Form 36
Prescribed by General Services Administration, Nov. 1949 Edition

CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT (Applicable) / ORDER OR INVITATION NO.: No. 7324-S

PAGE NO.: 2

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number and unit)	UNIT	UNIT PRICE	AMOUNT
	LOT I				
1	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: Puget Sound Naval Shipyard Bremerton, Washington Hull Numbers C-73959 and C-73960 are assigned to these boats.	2		$	$
2	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: Mare Island Naval Shipyard Vallejo, California Hull Numbers C-73961 and C-73962 are assigned to these boats.	2		$	$

NAME OF BIDDER OR CONTRACTOR

Standard Form 36
Nov. 1949 Edition

[fol. 83]

Standard Form 36
Prescribed by General Services Administration, Nov. 1949 Edition

CONTINUATION SHEET
(SUPPLY SCHEDULE)

CONTRACT, ORDER, OR INVITATION NO. (As applicable) Inv. No. 7324-S

PAGE NO. 3

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	LOT I (Cont'd)				
3	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: Puget Sound Naval Shipyard Bremerton, Washington Hull Numbers C-73963 and C-73964 are assigned to these boats.	2		$	$
4	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: Long Beach Naval Shipyard Long Beach, California Hull Numbers C-73965 and C-73966 are assigned to these boats.	2		$	$
	TOTAL LOT I	8		-----	$
	LOT II				
5	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: Norfolk Naval Shipyard Norfolk, Virginia Hull Numbers C-73967, C-73968 and C-73969 are assigned to these boats.	3		$	$
6.	40' Personnel Boat, Mark II Delivery Schedule: Transportation Charges Paid To: New York Naval Shipyard Brooklyn, New York Hull Numbers C-73970, C-73971 and C-73972 are assigned to these boats.	3		$	$

NAME OF OFFEROR OR CONTRACTOR

Standard Form 36
Nov. 1949 Edition

- Sthedule Page 3 over -

Standard Form 36
Prescribed by General Services Administration, Nov. 1949 Edition

CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT (Ar 42) I | ORDER OR MODIFICATION NO. No. 7324-S | PAGE NO. 4

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	LOT II (Cont'd)				
7	40' Personnel Boat, Mark II	2		$	$
	Delivery Schedule: Transportation Charges Paid To: Boston Naval Shipyard Boston, Massachusetts Hull Numbers C-73973 and C-73974 are assigned to these boats.				
8	40' Personnel Boat, Mark II	3		$	$
	Delivery Schedule: Transportation Charges Paid To: Philadelphia Naval Shipyard Philadelphia, Pennsylvania Hull Numbers C-73975, C-73976 and C-73977 are assigned to these boats.				
	TOTAL LOT II	11		- - -	$
	LOT III				
	Combination of Lots I and II	19		$	$
	Deliveries to start twelve months after award in accordance with the following Schedule:				

	12th Mo.	13th Mo.	14th Mo.	15th Mo.
Lot I - Item 1		2		
Lot I - Item 2				2
Lot I - Item 3	1	1		
Lot I - Item 4			2	
Lot II - Item 5	3			
Lot II - Item 6	1		2	
Lot II - Item 7				

NAME OF BIDDER OR CONTRACTOR

Standard Form 36
Nov. 1949 Edition

[fol. 85]

No. 7324-S

12th Mo. | 13th Mo. | 14th Mo. | 15th Mo.

Lot II - Item 8

3

METHOD OF DELIVERY: (The following provisions shall be considered a part of the specifications)

CONTRACTOR SHALL DELIVER THE BOATS IN ACCORDANCE WITH ANY ONE OR COMBINATION, AT THE CONTRACTOR'S ELECTION OF THE METHODS SHOWN BELOW AND THE FOLLOWING REQUIREMENTS:

ANY BOAT TO BE DELIVERED TO A DESTINATION MORE THAN 100 MILES FROM THE CONTRACTORS PLANT SHALL BE LOADED ON A RAILROAD FLAT-CAR OR FLAT-BED TRUCK OR TRAILER, OR TOWED BY OR DECKLOADED ABOARD A VESSEL FOR DELIVERY TO DESTINATION BUT SHALL NOT BE DELIVERED OVER THE ENTIRE DISTANCE UNDER ITS OWN POWER OPERATION OF THE VESSEL UNDER ITS OWN POWER OVER A PORTION OF THE ROUTE IS ALLOWABLE, PROVIDED THE DISTANCE THE VESSEL IS SO OPERATED DOES NOT EXCEED 100 MILES IN THE AGGREGATE

ANY VESSEL HEREUNDER TO BE DELIVERED TO A DESTINATION LESS THAN 100 MILES FROM THE CONTRACTOR'S PLANT, BY WATER, SHALL BE DELIVERED UNDER ITS OWN POWER, OR DECKLOADED ON A VESSEL, OR TOWED, OR LOADED ON A RAILROAD FLAT-CAR OR FLAT-BED TRUCK OR TRAILER.

ALL DELIVERY REQUIREMENTS, INCLUDING THOSE REQUIREMENTS SPECIFICALLY COVERED HEREIN SHALL BE PERFORMED IN ACCORDANCE WITH THE HIGHEST COMMERCIAL STANDARDS

THE CONTRACTOR SHALL NOT USE NOR PERMIT ANYONE TO USE, AS A TOWING VESSEL, ANY BOAT CONSTRUCTED UNDER THIS CONTRACT

THE GOVERNMENT MAY, AT ITS DISCRETION, UPON ARRIVAL OF THE BOATS AT THE DESTINATIONS AND PRIOR TO PRELIMINARY ACCEPTANCE, PERFORM ADDITIONAL TRIALS IN ORDER TO ASCERTAIN THAT NO DAMAGE OR DEFORMATION HAS OCCURED IN SHIPMENT

UPON ARRIVAL OF BOATS AT DESTINATION THE CONTRACTOR SHALL DELIVER THE BOATS TO THE GOVERNMENT IN THE FOLLOWING MANNER:

(1) FOR METHOD "A" OR "B" - IN THE WATER AT DOCKSIDE

(2) FOR METHOD "C" OR "D" - ON THE PIER

ny. No. 7324-S

METHOD "A"

IF ANY BOAT IS TO BE DELIVERED UNDER ITS OWN POWER THE CONTRACTOR SHALL:

1. Navigate and operate the Boat in accordance with good commercial practice.
2. Limit engine operating speeds to 1800 RPM or below.
3. Replace oil filters when the boat arrives at the destination.
4. Drain the lube oil and replace when the boat arrives at the destination.
5. Cradle not required.

METHOD "B"

IF ANY BOAT IS TOWED TO THE DESTINATION, THE CONTRACTOR SHALL:

1. Securely lock the boat s shaft and rudder in such a manner as to prevent motion, and take such other normal precautions as the Superviser considers necessary for the circumstances involved.
2. Not use nor permit any one to use, as a towing vessel, any boat to be constructed under this contract.
3. Tow the boats in accordance with good commercial practice.
4. Cradle not required.

METHOD "C"

IF ANY BOAT IS TO BE DELIVERED DECKLOADED ON ANOTHER VESSEL, THE CONTRACTOR SHALL:

1. Adequately cradle and secure the boat for shipment.
2. Prepare plans for cradle and stowage method, and submit such plans to the cognizant Supervisor of Shipbuilding for approval prior to shipment.

METHOD "D"

IF ANY BOAT IS TO BE DELIVERED BY RAIL OR TRUCK THE CONTRACTOR SHALL:

1. Adequately cradle and secure the boat for shipment.

- Schedule Page 7 over -

2. Prepare plans for cradle and stowage meth and submit such plans to the cognizant Supervisor of Shipbuilding for approval prior to shipment.

GOVERNMENT-FURNISHED PROPERTY: The Government shall furnish, in accordance with Article 30, "Government-Furnished Property", of the General Provisions, only the materials listed below for use under the contract, notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in the contract plans and specifications. Any such requirements for the furnishing of materials by the Government appearing in the contract plans and specifications shall be of no force and effect and are superseded by the aforementioned list. Any and all materials required for the performance of the contract which do not appear on on this list shall be furnished by the Contractor.

In: No. 7328-S

The attached Standard Form 32, November 1949 Edition, General Provisions and Additional General Provisions (Advertised Supply Contract BuShips 10-1-53) form a part of this contract.

SAMPLES: Notwithstanding any statement in the specifications to the contrary, bidders are not required to furnish samples as a part of their bids.

PROGRESS PAYMENTS AND LIENS: Section 31 of the Additional General Provisions entitled "Withholding of Payments" is deleted and the following is substituted in lieu thereof:

(a) Payment of the total contract price shall be made as follows:

(1) The Department shall upon submission by the Contractor of invoices, certified by the Contractor as hereinafter provided, make payments up to ninety-seven percent (97%) of the total contract price in accordance with the provisions of this clause on the basis of progress in the completion of the performance of this contract as certified by the Naval Inspector. The Contractor from time to time as the work progresses, but not more frequently than twice a month, may submit invoices to the Naval Inspector for certification by him as to the percentage of completion of performance of the work hereunder. The amount of each such invoice shall not exceed that percentage of the contract price equal to the percentage of completion of performance of the contract, as so certified by the Naval Inspector, less any amounts previously billed for progress payments. Payments shall be made to the Contractor of ninety-seven percent (97%) of the net amount of each invoice so submitted and certified, provided that no such payments shall be made in an amount which, when added to all payments previously made, exceeds the costs certified by the Contractor on the related invoice plus five percent (5%) of such costs. If upon delivery and acceptance of all articles called for by this contract, ninety-seven percent (97%) of the total contract price has not been paid under this paragraph (1), any balance of such ninety-seven percent (97%) shall be paid upon submission of a properly certified invoice.

(2) Upon completion and final acceptance of all work required hereunder the balance due the Contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor. The Contractor and each assignee under an assignment in effect at the time of final settlement shall execute and deliver at the time of and as a condition precedent to final payment, a release in form and substance satisfactory to and containing such exceptions as may be found appropriate by the Contracting Officer, discharging the Government, its officers, agents and employees of and from all liabilities, obligations and claims arising under this contract. The Contracting Officer may authorize partial payments on account of any such balance to be made in advance of final settlement. If this contract shall have been terminated in whole or in part, any such release shall also contain such a release of all claims against the Government arising out of or by virtue of such termination.

nv. No. 7324-S

(b) Any and all progress payments made hereunder shall be secured, when made, by a lien in favor of the Government upon the vessels, articles, and things contracted for on account of all payments so made and on all material, equipment and other property acquired for or allocated to the performance of this contract, except to the extent that the Government, by virtue of any other provision of this contract, or otherwise, shall have valid title to such articles, things, materials, or other property as against other creditors of the Contractor. If such property is not identified by marking or segregation, the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this Section is paramount to all other liens under the provisions of an Act approved August 22, 1911 (Pub. No. 41, 62nd Cong.; 37 Stat. 32; 34 U S.C. sec. 582).

(c) The Contractor, to the extent determined necessary and practicable by the Naval Inspector, shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provisions of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. The Contractor shall also maintain adequate accounting control over such property on its books and records which shall be subject to examination by the Naval Inspector at all reasonable times to assure compliance with this provisions.

INSURANCE: (a) Until each boat has been preliminarily accepted by the Department, each boat and all materials, equipment and appliances therefor, including materials and equipment to be furnished by the Government to the Contractor for installation in each boat, shall, at the expense of the Contractor, be kept fully and duly insured by the Contractor in the names of the United States of America and the Contractor under form of Builders' Risk Insurance (Navy-Form-Syndicate) policy, including the rider attached to the "Free of Capture and Seizure" clause thereof where available. Where such insurance is not available the Contractor shall procure and thereafter maintain in the names of the United States of America and the Contractor, until each boat has been preliminarily accepted by the Department, fire and extended coverage insurance during construction and inland or ocean marine all risk cargo insurance during delivery with respect to each boat and all materials, equipment and appliances therefor, including materials and equipment to be furnished by the Government to the Contractor for installation in each boat. Where none of the foregoing insurance is available during water trials, the Contractor shall procure and thereafter maintain such other insurance for each boat as will cover the usual marine perils during such trials. The amount of the insurance shall not be less than the aggregate of the amounts paid to the Contractor under this contract by the Department plus the value of any materials, equipment and appliances furnished by the Government as determined from time to time by the Contracting

- Schedule page 11 over -

Officer. Loss under the aforementioned insurance shall be payable to the Secretary of the Navy, or order, for the use of the United States of America to the extent of payments made to the Contractor under this contract plus the amount of loss of or damage to the material, equipment and appliances furnished by the Government and for use of the Contractor to the extent of any remaining balance. Such insurance shall be procured from such domestic underwriters as may be approved by the Office of Naval Material, Insurance Branch, Department of the Navy.

(b) All policies shall be delivered to the Office of Naval Material, Insurance Branch, Department of the Navy, for its approval and custody. The terms of the policies, the insurance companies and the underwriters shall at all times be satisfactory to the Office of Naval Material, Insurance Branch. Policies not in conformance herewith shall be surrendered and cancelled upon the direction of the Office of Naval Material, Insurance Branch and new policies procured in conformance herewith.

(c) In the event that the Contractor shall procure or maintain other insurance upon any materials or other property upon which a lien exists in favor of the Government or to which the Government has title pursuant to the terms of this contract, the policy or policies shall contain a loss payable clause making losses payable to the Secretary of the Navy or Order. Any payments thereunder shall inure to the benefit of the Government to the extent of any loss suffered by the Government and to the Contractor as to any remaining balance. The provisions of this paragraph (c) shall not be deemed to require that the Contractor procure or maintain any such other insurance.

(d) The foregoing insurance requirements shall not be construed as limiting in any way the full responsibility of the contractor for the supplies under the contract, as provided in Section 6 of the General Provisions.

DISCHARGE OF LIENS: The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than a favor of the Government, which at any time exists or arises with respect to the boats, and machinery, fittings, equipment or materials for the boats. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged said lien or right in rem at the expense of the Contractor.

PRELIMINARY ACCEPTANCE: Upon satisfactory completion of construction of the boats and of the applicable trial requirements in accordance with the plans and specifications and upon delivery, with all spare parts required, as provided in this contract, each boat shall be preliminarily accepted.

GUARANTY PERIOD: (a) The guaranty period under Section 34 of the General Provisions of this contract shall be six (6) months from the date of preliminary acceptance of each boat.

(b) Notwithstanding the provisions of Clauses 5 and 34 of the General Provisions, the liability of the Contractor under this contract for the correction or replacement of defective or non-conforming supplies (as "supplies" are defined in Article 5, "Inspection", of the General Provisions) delivered under this contract arising during the guaranty period (other than defects of non-conformities resulting from fraud or such gross mistakes as amount to fraud) shall be limited to a dollar amount equal to the result obtained by multiplying the total contract price by six percent (6%).

FINAL ACCEPTANCE: (a) Each boat and other articles to be furnished hereunder shall be finally accepted, upon the expiration of the guaranty period, if found by the Chief of the Bureau of Ships to conform with the plans and specifications.

(b) Final acceptance of the boats and other articles to be furnished hereunder shall be conclusive except as regards fraud or such gross mistakes as amount to fraud.

xxxxx

[fol. 97] Standard Form 32
Prescribed by General Services
Administration, Nov. 1949 Edition

GENERAL PROVISIONS

(Supply Contract)

5. INSPECTION

(*a*) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to final acceptance.

(*b*) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or corrected in place, as requested by the Contracting Officer, by and at the expense of the Contractor promptly after notice, and shall not again be tendered for acceptance unless the former tender and either the rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies, when requested by the Contracting Officer, and to proceed promptly with the replacement or correction thereof, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor elects to correct or replace the supplies which the Government has a right to reject and is able to make such correction or replacement within the required delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price

shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(*c*) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government: *Provided*, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor. Final acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but, failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(*d*) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to final acceptance. Except as otherwise provided in this contract, final acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(*e*) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

6. RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated [fol. 98] delivery point, regardless of the point of inspection; and (ii) the Contractor shall bear all risks as to rejected supplies after notice of rejection.

7. PAYMENTS

The Contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

* * * * * * *

11. DEFAULT

(*a*) The Government may, subject to the provisions of paragraph (*b*) below, by written Notice of Default to the [fol. 99] Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(*b*) The Contractor shall not be liable for any excess costs if any failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and defaults of subcontractors due to any of such causes unless the Contracting Officer shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(*c*) In the event the Government terminates this contract in whole or in part as provided in paragraph (*a*) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services. *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(*d*) If this contract is terminated as provided in paragraph (*a*) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price for completed supplies delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials de-

livered to and accepted by the Government and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(*e*) If, after notice of termination of this contract under the provisions of paragraph (*a*) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph (*b*) of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (*Except as otherwise provided in this contract, this paragraph (e) applies only if this contract is with a military department.*)

(*f*) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

12. DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall be final and conclusive: *Provided*, That if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall pro-

ceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

. . . . . .

[fol. 100]

. . . . . .

[fol. 101] Additional General Provisions

. . . . . .

[fol. 102] 30. Government-Furnished Property

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property which the Schedule or the specifications state the Government will furnish (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property of a type suitable for use will be delivered to the Contractor at the times stated in the Schedule or if not so stated in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, if requested by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall grant to the Contractor a reasonable extension of time in respect of such delivery or performance dates. The Government shall not be liable to the Contractor for damages or loss of profit by reason of any delay in delivery of or failure to deliver any or all of the Government-furnished Property, except that in case of such delay or failure, upon the written request of the Contractor, an equitable adjustment shall be made in the delivery or performance dates, or price, or both, and in any other contractual provisions affected thereby, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, upon the written request of the Contractor, an equitable adjustment shall be made in the delivery or performance dates, or

price, or both, and in any other contractual provisions affected by such decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of Government-furnished Property in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" dated March 1951.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that damaged or defective Government-furnished Property is delivered to the Contractor, or any other damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

[fol. 103] (f) Unless otherwise provided in this contract, the Contractor, upon delivery to it of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. Recoverable scrap from Government-furnished Property shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this Clause shall be in writing.

* * * * * * *

34. GUARANTY

Notwithstanding the provisions of Clause 5 of these General Provisions, entitled "Inspection", the Contractor guarantees that at the time of delivery thereof the supplies provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract. Notice of any such defect or non-conformance shall be given by the Government to the Contractor within one year of the delivery of the defective

or non-conforming item, unless a different period of Guaranty is specified in the Schedule. If required by the Government within a reasonable time after such notice, the Contractor shall with all possible speed correct or replace the defective or non-conforming item or part thereof. When such correction or replacement requires transportation of the item or part thereof, shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return, shall be borne by the Contractor; the Government shall bear all other shipping costs. This Guaranty shall then continue as to corrected or replacing supplies or, if only parts of such supplies are corrected or replaced, to such corrected or replacing parts, until one year after the date of redelivery, unless a different period of Guaranty is specified in the Schedule. If the Government does not require correction or replacement of a defective or non-conforming item, the Contractor, if required by the Contracting Officer within a reasonable time after the notice of defect or non-conformance, shall repay such portion of the contract price of the item as is equitable in the circumstances.

. . . . . .

[fol. 104]

. . . . . .

[fol. 106]

EXHIBIT B

DEPARTMENT OF THE NAVY
BUREAU OF SHIPS
WASHINGTON 25, D. C.

(Emblem)

In Reply Refer to
NObs-3572(1718T)
Ser 1718-3714

REGISTERED

2-Aug 1955

Rice Shipbuilding Corporation
East Boothbay, Maine

Gentlemen:

Reference is made to the Government's telegram to you dated 20 July 1955 (confirmed by letter dated 22 July 1955),

notifying you that your performance under Contract NObs-3572 is in default due to your failure to deliver the vessels within the time specified in the contract, and due to your failure to make satisfactory progress in the prosecution of the work under the contract. You were requested to cure such default within ten days from receipt of the Government's telegram dated 20 July 1955, or to submit reasons, if any, why this contract should not be terminated for default.

Contract NObs-3572 provides for delivery of the vessels in accordance with the following schedule:

4 Vessels during March 1955
2 Vessels during April 1955
2 Vessels during May 1955
3 Vessels during June 1955

To date, however, only one vessel has been delivered. Moreover, on 25 March 1955 all work on Contract NObs-3572 was discontinued and has not been resumed.

Since you have failed to cure the default specified in the Government's telegram dated 20 July 1955 or provide any acceptable reason or basis why the contract should not be terminated for default, you are hereby notified that Contract NObs-3572 is terminated for default due to your failure to deliver the last ten vessels within the time specified in the contract and due to your failure to make satisfactory progress in the prosecution of the work under this contract. This termination is made pursuant to Clause 11 of the General Provisions of Contract NObs-3572.

The ten undelivered vessels under Contract NObs-3572 represent a firm requirement, and the Government intends to [fol. 107] exercise its rights under Clause 11(c) of the General Provisions of Contract NObs-3572 by having the undelivered vessels completed by another shipbuilder. You will be held liable for any excess costs incurred by the Government in having the vessels completed by another shipbuilder.

Pursuant to Clause 11(d) of the General Provisions of Contract NObs-3572 you are directed immediately to transfer to the Government (insofar as not previously trans-

ferred) title to the partially completed vessels and to such manufacturing materials, within the meaning of the contract, as shall be designated by the Supervisor of Shipbuilding, USN, Bath, Maine, and you are further directed to deliver to the Government, in such manner and at such times as shall be specified by the Supervisor of Shipbuilding, USN, Bath, Maine, said partially completed vessels and manufacturing materials. You are further directed to protect and preserve said vessels and manufacturing materials.

Sincerely yours,

J. B. DUVAL, JR.
Contracting Officer
Bureau of Ships

[fol. 108]

EXHIBIT C

Instrument of Transfer of Title Under Contract NObs-3572

WHEREAS, Contract NObs-3572, dated March 26, 1954, between RICE SHIPBUILDING CORPORATION (hereinafter referred to as the "Transferor") and the UNITED STATES OF AMERICA (hereinafter referred to as the "Transferee"), provides that, in the event that the Transferee terminates said contract pursuant to the provisions of the clause thereof entitled "Default", the Transferee, in addition to any other rights provided in said clause, may require the Transferor "to transfer title and deliver to the Government [i.e., Transferee], in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called 'manufacturing materials') as the Contractor [i.e., Transferor] has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated . . . "; and

WHEREAS, in the performance of that part of said contract NObs-3572 which, as noted below, has been terminated, the

Transferor has specifically produced or specifically acquired certain partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights; and

[fol. 109] WHEREAS, by written Notice of Default dated 2 August 1955, the Transferor, pursuant to the said "Default" clause, terminated the whole of said contract NObs-3572; and

WHEREAS, the Contracting Officer, by such Notice of Default, directed the Transferor to transfer title and deliver to the Transferee "such manufacturing materials, within the meaning of the contract, as shall be designated by the Supervisor of Shipbuilding, United States Navy, Bath, Maine";

NOW, THEREFORE,

1. In compliance with the direction of the Contracting Officer, as aforesaid, the Transferor does hereby and by this instrument transfers to the Transferee all of the Transferor's right, title and interest in and to said manufacturing materials, within the meaning of the contract, as have been designated by the Supervisor of Shipbuilding, United States Navy, Bath, Maine.

2. The said manufacturing materials, within the meaning of the contract, which have been designated by the said Supervisor of Shipbuilding are more specifically described in Exhibit A, attached hereto and made a part hereof, but in the event of any conflict or inconsistency between said Exhibit A and the property constituting such manufacturing materials, within the meaning of the contract, or in the event that there is an omission from said Exhibit A of any property falling within the category of said manufacturing materials, within the meaning of the contract, nevertheless, notwithstanding any such conflict, inconsistency, or omission, the Transferor does hereby and by [fol. 110] this instrument transfers all of its right, title and interest in and to said manufacturing materials, within the meaning of the contract, as aforesaid.

Executed this 4th day of August, 1955, effective as of August 4, 1955.

RICE SHIPBUILDING CORPORATION

/s/ HENRY W. RICE
TREASURER
(Title)

EAST BOOTHBAY, ME.
(Address)

CERTIFICATE

I, Baxter M. Rice, certify that I am the Clerk of RICE SHIPBUILDING CORPORATION; that Henry W. Rice, who signed this Instrument of Transfer of Title on behalf of RICE SHIPBUILDING CORPORATION, was then Treasurer of said RICE SHIPBUILDING CORPORATION; that said Instrument of Transfer of Title was duly signed for and in behalf of said RICE SHIPBUILDING CORPORATION by authority of its governing body, and is within the scope of its corporate powers.

/s/ BAXTER M. RICE (Corporate Clerk)
(Signature)

[fol. 111]

EXHIBIT G

Enclosure 7 and it enclosures

DEPARTMENT OF THE NAVY
OFFICE OF THE
SUPERVISOR OF SHIPBUILDING, U. S. NAVY
AND NAVAL INSPECTOR OF ORDNANCE
BATH, MAINE

SupShip&InsOrd Bath
NObs-3572/L4/L6(41.1)SBW:jaw
Serial 356

JAN 24 1958

From: Supervisor of Shipbuilding, USN
and Naval Inspector of Ordnance

To: Chief, Bureau of Ships Code 161A

Subj: Contract NObs-3572; Rice Shipbuilding Corporation; Request for Data

Ref: (a) Phone conference of 21 January 1958; Mr. S. Suydam, BuShips calling CDR. J.L. Henderson, SupShip, Bath.

Encl: (1) Copy of Rice Shipbuilding Corporation invoice of 11 April 1955 in the amount of $426.80

(2) List of Progress payments

(3) Copies of progress work sheets and Rice Shipbuilding Corporation letters reporting costs

(4) Copy of BuShips letter NObs-3572 (1718T) Serial 1718-3714 of 2 August 1955 to Rice Shipbuilding Corporation

1. Data requested by reference (a) is forwarded herewith.

   a. Enclosure (1) is a copy of the last progress payment invoice. Payment of this invoice was made by Navy Regional Accounts Office 27 April 1955.

   b. Enclosures (2) and (3) include a listing of progress payments and the substantiating documents.

   c. Enclosure (4) is a copy of the termination notice.

159

/s/ J. L. Henderson,
J. L. Henderson
Acting

M C V

Nobs 3572

(Stamp)
Enclosures Received in 233

Italicized material handwritten.

[fol. 112] RICE SHIPBUILDING CORPORATION
East Boothbay, Maine

April 11, 1955

To UNITED STATES OF AMERICA
NAVY DEPARTMENT

CONTRACT No. NObs-3572
CONTRACT PRICE: ~~$175,900.00~~

Amount due for progress attained in the completion of 48' Personnel Boats, C-73967 to C-73977—

	Total to date	Prev. billed	Net amt. due		
Boat No. C-73967	$ 16,200.00	16,020.00	180.00	*5.40*	*174.60*
C-73968	15,900.00	15,900.00			
C-73969	15,100.00	15,100.00			
C-73970	14,000.00	13,970.00	30.00	*.90*	*29.10*
C-73971	13,040.00	13,010.00	30.00	*.90*	*29.10*
C-73972	12,670.00	12,660.00	10.00	*.30*	*9.70*
C-73973	12,460.00	12,460.00			
C-73974	11,950.00	11,760.00	190.00	*5.70*	*184.30*
C-73975	11,550.00	11,550.00			
C-73976	11,460.00	11,460.00			
C-73977	11,430.00	11,430.00			
	145,760.	*145,320.*	440.00	*13.20*	*426.80*

Payment request—ninety-seven percent of ~~net amount due~~ $426.80
13.20 reserve

CERTIFICATION

1. I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed.

2. I certify that the insurance terms of the contract have been met.

Henry W. Rice
Treasurer

1718

Nobs 3572

MC√

Make payment of this invoice to assignee—The Pilgrim Trust Company, Boston, Massachusetts.

Italicized material handwritten.

Tabulation captioned "Rice Shipbuilding Corp., NObs 3572."

(See Opposite) ☞

RICE SHIPBUILDING CORP. NOBs 3572

C-73967 THRU C-73977

[fol. 113]

DATE OF INVOICE	DATE FORWARDED	EARNED TO DATE	GROSS PAYMENT	3% RESERVE	TOTAL RESERVE	NET PAYMENT	TOTAL PRIO
1 JUN 1950	21 JUN 1950	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10 JUNE	23 JUNE	11860	6502	19506	35580	6306790	11[illegible]
25 JUNE	14 JULY	27250	15390	46170	81750	14928630	26[illegible]
10 JULY	19 JULY	34670	7420	22260	104010	7197740	33[illegible]
26 JULY	4 AUG	40730	6060	18780	122790	6272260	39[illegible]
10 AUG	18 AUG	49510	8780	26340	149130	8332260	47[illegible]
25 AUG	9 SEP	57296	7780	23340	171870	7581140	55[illegible]
10 SEP	21 SEP	65985	8690	26070	197940	8429130	64[illegible]
24 SEP	1 OCT	72410	6420	19260	217200	6232260	70[illegible]
11 OCT	19 OCT	77150	4740	14220	231420	4637780	76[illegible]
25 OCT	29 OCT	87480	10330	30990	262410	10058360	[illegible]
10 NOV	18 NOV	94070	6590	19770	[illegible]	6392230	91[illegible]
24 NOV	6 DEC	101940	7870	23610	305010	7638390	[illegible]
10 DEC	22 DEC	111020	9080	27240	352250	8815360	[illegible]
27 DEC	9 JAN 1951	115750	4730	14190	366440	4592110	[illegible]
10 JAN 1951	17 JAN	122520	6770	20310	386750	6663300	[illegible]
26 JAN	27 JAN	129040	6520	19560	398710	6327740	[illegible]
10 FEB	16 FEB	132960	3920	11760	410160	3804240	[illegible]
26 FEB	1 MAR	138720	5760	17280	427440	5594720	[illegible]
1 MAR	3 MAR	139820	1100	3300	430740	1061760	[illegible]
10 MAR	15 MAR	142860	3040	9120	439860	2939100	[illegible]
26 MAR	29 MAR	146320	2460	[illegible]	[illegible]	2388420	[illegible]
11 APR	16 APR	146760	440	[illegible]	447240	(42600)	[illegible]

Enclosures 10 and 11

v 4 "Progress Chart - Progress"

Yard No. -73967 68 69 70 71 72 73 74 75 76 77 78

Framing

| | | |

[fol. 115] April 11, 1955

From: Rice Shipbuilding Corporation

To: Supervisor of Shipbuilding, USN, and Naval Inspector of Ordnance, Bath, Maine

Subj: Contract NObs-3572; costs to April 11, 1955

Ref: S. B. Wood, Progress and Finance

1. We are submitting, as at April 11, 1955, for your attention, total costs on the above boats as follows:

Payrolls	$ 94,392.52
Purchased Materials	87,331.30
Overhead	16,611.41
	$198,335.23

RICE SHIPBUILDING CORPORATION

Henry W. Rice
Treasurer

$87,551.50
Boat No. 1— 8,050 —
$79,501.50—
÷ 10 =
Boats 2 thru 11—$7,950 each = 10—

HWR:PBM

Italicized material handwritten

[fol. 116]

EXHIBIT H

Enclosure 8

DEPARTMENT OF THE NAVY
BUREAU OF SHIPS
WASHINGTON 25, D. C.

(Emblem)

In Reply Refer to
NObs-3572(1718T)
Ser 1718-798

13 MAR 1957

Rice Shipbuilding Corporation
East Boothbay, Maine

Gentlemen:

Reference is made to the Government's letter dated 19 October 1956, notifying you that excess costs to the Government resulting from your default under Contract NObs-3572 would amount to not less than $116,142.94.

The ten undelivered vessels under Contract NObs-3572 have been completed by the New York Naval Shipyard, the Norfolk Naval Shipyard, and the Philadelphia Naval Shipyard. The ex s costs incurred by the Government as a result of your default under Contract NObs-3572 have been finally determined; they amount to $146,470.28.

Demand is hereby made for payment of excess costs in the amount of $146,470.28. This letter is also to advise you that the Government will amend its proof of claim presently filed with the U. S. District Court for the District of Massachusetts, sitting in bankruptcy, Case No. 622-55, to reflect the final determination of excess costs.

Sincerely yours,

E. H. Koch
Contracting Officer
Bureau of Ships

Dimaisi
Dimisi
Code 529 Burke
Mr. Stepp No 7990

[fol. 119] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 120]

SUPREME COURT OF THE UNITED STATES

No. 270, October Term, 1959

CECIL W. ARMSTRONG et al., Petitioners,

vs.

THE UNITED STATES.

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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